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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
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09/262,656    03/04/99    MELINO

C    MELINO-2

PM82/0907

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EXAMINER

PUROL, D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3634

DATE MAILED: 09/07/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/262,656**

Applicant(s)  
**Charles E. Melino et al.**

Examiner  
**David M. Purol**

Group Art Unit  
**3634**



☒ Responsive to communication(s) filed on Jun 19, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-29 is/are pending in the application.

Of the above, claim(s) 13-17 and 27-29 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-12 and 18-26 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3634

1. Applicant's election of Group I in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 13-17 and 27-29 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. On page 6, lines 4-6 are to be updated including the serial number and status of applicant's related application.

On page 11, line 2 refers to figure 5A. However, there is no figure 5A. Furthermore, lines 1-14 refer to figure 5 as showing the various reference numerals. An inspection of figure 5 reveals that those reference numerals are not depicted as stated.

**Correction is required.**

4. Claims 1-12, 18-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point

Art Unit: 3634

out and distinctly claim the subject matter which applicant regards as the invention.

These claims are replete with indefinite language for which its intended meaning is unknown. For example: claim 1, line 2 "supported by on or more poles"; claim 3, lines 1-2 "a neck, a base" which is a double recitation of claim 1 at lines 2-3, line 2 "an apex said apex"; claim 4, line 3 "arranged in such a fashion", line 4 "face to face contact", line 4 "the body areas and of the respective", line 6 "face to face contact"; claim 6, line 2 "that constitutes the axis"; claim 9, line 2 "a pole said gasket"; claim 10, lines 1-2 "said wings butt up against the creating a seal"; claim 11, line 2-3 "a said", line 3 "the said"; claim 12, line 2 "which is pre-applied"; claim 18, line 2 "by on or more poles", lines 3-4 "said clamp holding said pole to a tile support of the suspended ceiling" wherein claim 18 is drawn to the subcombination of the dust containment system per se and not to the combination of the dust containment system and the suspended ceiling"; claim 19, line 3 "arranged in such a fashion", lines 4 and 6 "face to face contact", line 4 "the body areas and of the respective"; claim 21, line 2 "constitutes the axis"; claim 24, line 2 "a pole said gasket"; claim 25, lines 1-2 "said wings butt up against the creating a seal"; claim 26, lines 2-3 "a curtain" wherein it is not clear if this is referring to the same curtain as set forth in claim 18.

Art Unit: 3634

These claims are replete with terminology for which there is no antecedent basis. For example: claim 1, line 3 "said flexible curtain"; claim 3, line 2 "the portion"; claim 4, line 3 "the tips", line 4 "the body areas", line 5 "the interior"; claim 6, line 2 "the pin"; claim 9, line 5 "said wall end"; claim 12, line 1 "the peel and stick tape"; claim 19, line 3 "the tips", line 4 "the body areas", line 5 "the interior"; claim 21, line 2 "the pin"; claim 24, line 5 "said wall end".

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.


(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-3,12,18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dotson. Dotson discloses a containment system comprising poles 300, flexible stopper 330, flexible sheeting 60, clamps 100,200.

Art Unit: 3634

6. Claims 1-3,12,18 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Whittmore.

7. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Towfigh, Baker, Johnson, Burgess '363 and '969, Fara, Boyd, Gabster, Melino, Ward.

  
**David M. Purol**  
**Primary Examiner**  
**Art Unit 3634**